

§ 113.6 Conduct of investigations.

(a) *Periodic compliance reviews.* SBA shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes that he, she or any class of individuals has been subjected to discrimination prohibited by this part may, personally or through a representative, file with SBA a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by SBA.

(c) *Investigations.* SBA will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the applicant or recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the applicant or recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, SBA will so inform the applicant or recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 113.7.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, SBA will so inform the applicant or recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No applicant or recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the con-

duct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 113.7 Procedure for effecting compliance.

(a) *General.* (1) If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by suspending, terminating, or refusing any financial assistance approved but not yet disbursed to an applicant. In the case of loans partially or fully disbursed, compliance with this part may be effected by calling, canceling, terminating, accelerating repayment, or suspending in whole or in part the financial assistance provided. In addition compliance may be effected by any other means authorized by law.

(2) Such other means may include but are not limited to (i) legal action by SBA to enforce its rights, embodied in the assurances described in § 113.4; (ii) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States; and (iii) any applicable proceedings under State or local law.

(b) *Noncompliance with § 113.4.* If an applicant fails or refuses to furnish an assurance required under § 113.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. SBA shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that SBA shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part. Such proceedings shall be conducted in accordance with the provisions of part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of

§ 134.228. The applicant's failure to file a timely motion in accordance with §§ 134.222 and 134.211, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of part 134.

(c) *Condition precedent.* Under this part 113, no order suspending, terminating, refusing, calling, canceling, or accelerating repayment of financial assistance in whole or in part shall become effective until (1) SBA has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means; (2) there has been an express finding on the record after an opportunity for an oral hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part; and (3) the initial decision has become final pursuant to § 134.227(b).

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until:

(1) SBA has determined that compliance cannot be secured by voluntary means.

(2) The action has been approved by the Administrator or the Administrator's designee.

(3) The applicant or recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

(4) The expiration of at least 10 days from the mailing of such notice to the applicant or recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the applicant or recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[44 FR 20068, Apr. 4, 1979, as amended at 49 FR 33629, Aug. 24, 1984; 61 FR 2691, Jan. 29, 1996]

§ 113.8 Effect on other regulations, forms and instructions.

(a) *Effect on other regulations.* All regulations, orders of like directions heretofore issued by SBA which impose re-

quirements designed to prohibit any discrimination against individuals on the grounds of race, color, religion, sex, handicap, marital status, age, or national origin and which authorize the suspension or termination of a refusal to grant to or to continue financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction or like direction prior to the effective date of this part.

(b) *Forms and instructions.* SBA shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this part.

(c) *Supervision and coordination.* The Administrator may from time-to-time assign to officials of SBA or to officials of other agencies of the Government, with the consent of such agencies, responsibilities in connection with the effectuation of the purposes of this part (other than responsibility of first decisions as provided in § 113.9) including the achievement of effective coordination and maximum uniformity within SBA and within the executive branch of the Government in the application of this part and of comparable regulations issued by other agencies of the Government to similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Administrator of SBA.

[44 FR 20068, Apr. 4, 1979. Redesignated at 49 FR 33629, Aug. 24, 1984]

APPENDIX A TO PART 113

Name of program	Authority
Financial Programs	
Regular business loans	Small Business Act, sec. 7(a).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).